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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

JOSEPH ZIMMERMAN, individually and as
Trustee of the ZIMMERMAN FAMILY
TRUST 1994,

Plaintiff,

vs.

PENN-STAR INSURANCE COMPANY,

Defendant.

CASE NO.: 2:22-cv-1174-JCM-MDC

**JOINT AMENDED STIPULATED
DISCOVERY PLAN AND
SCHEDULING ORDER**

***SPECIAL SCHEDULING REVIEW
REQUESTED***

[This is the Parties' 3rd extension]

Plaintiff Joseph Zimmerman, both individually and as Trustee of the Zimmerman Family Trust 1994 ("Plaintiff") and Defendant Penn-Star Insurance Company ("Defendant"), by and through their counsel, jointly, submit the following Amended Stipulated Discovery Plan and Scheduling Order pursuant to Federal Rule of Civil Procedure 26(f) and Local Rule 26-1.

Pursuant to Federal Rule of Civil Procedure 26(f) and Local Rule 26-1(a), a hearing was held on February 11, 2025, and was attended by Kevin Pollack, Esq., for Plaintiff, and Paul A.

1 Acker, Esq., of Resnick & Louis, P.C., wherein the Parties were ordered to file this Joint
2 Amended Discovery Plan and Scheduling Order. Subsequently, the Joint Amended Discovery
3 Plan and Scheduling Order submitted by the Parties has been rejected with requests by the
4 Court to make corrections and resubmit.

5 **JOINT AMENDED DISCOVERY PLAN AND PROPOSED SCHEDULE**

6 **A. Initial Disclosures**

7 The Parties exchanged their initial disclosures on or before October 22, 2022.

8 **B. Subjects of Anticipated Discovery**

9 Pursuant to Fed. R. Civ. P. 26(f)(3)(B), the Parties believe that discovery may be needed
10 on the following subjects: (1) the nature and basis of Plaintiff's insurance claim; (2)
11 Defendant's adjustment, investigation, and evaluation of Plaintiff's insurance claim; (3)
12 Defendant's claims and adjustment policies and procedures; (4) Defendant's claim and coverage
13 decisions; (5) the communications between the parties and/or their agents; (6) the issuance of
14 the subject insurance policy and how it was underwritten; and (7) the nature and scope of
15 Plaintiff's damages.
16

17 **C. Discovery Completed**

18 The following discovery has already been completed:

- 19
- 20 - The parties have exchanged disclosures and accompanying exhibits.
 - 21 - The parties have exchanged written discovery.
 - 22 - The deposition of Joseph Zimmerman was taken.
 - 23 - The deposition of James Overton was taken.
- 24

25 **D. Discovery Plan and Proposed Schedule**

26 The Parties propose the following Amended Discovery Plan and Proposed Schedule
27 Pursuant to Local Rule 26-1(b):
28

1 **1. Discovery Cut-Off Date**

2 The Parties request a special scheduling review, and believe this case warrants a special
3 scheduling order for the reasons stated herein.

4 The Parties filed cross motions for partial summary judgment and had previously agreed
5 that it would make economic and practical sense to defer certain forms of discovery until after
6 the Court issued a ruling regarding the coverage issue. The Parties agreed this approach would
7 enable the Parties to evaluate settlement opportunities more meaningfully before incurring costs
8 to perform discovery on issues which may be unnecessary depending on the Court's coverage
9 ruling. The Court issued its ruling on the Parties' cross motions for partial summary judgment
10 on July 12, 2024.

11 On February 11, 2025 the Parties were ordered to appear before this Court. At said
12 hearing, the Court ordered the Parties to file this Amended Joint Discovery Plan Scheduling
13 Order with instructions to complete discovery within 90 days of the confirmed April 28, 2025
14 mediation, which is July 25, 2025.

15 The first defendant, Penn-Star Insurance Company, answered or otherwise appeared in
16 this matter on July 26, 2022. The number of days required for discovery is 1,096 days. For the
17 reasons explained herein, the close of discovery will be July 25, 2025.

18 **2. Amending the Pleadings and Adding Parties**

19 Pursuant to Local Rule 26-1(b)(2), the deadline for filing motions to amend the
20 pleadings or to add parties is 90 days before the close of discovery, which is April 28, 2025.

21 **3. Expert Disclosures (Fed. R. Civ. P. 26(a)(2))**

22 Pursuant to Local Rule 26-1(b)(3) the Parties' respective expert disclosures must be
23 made 60 days before the discovery cut-off date, which is May 27, 2025, and rebuttal expert
24 disclosures must be made 30 days after the initial disclosure of experts, which is June 26, 2025.

1 **4. Dispositive Motions**

2 Pursuant to Local Rule 26-1(b)(4), the deadline for filing dispositive motions is 30 days
3 after the discovery cut-off date, which is August 25, 2025.

4 **5. Pretrial Order**

5 Pursuant to Local Rule 26-1(b)(5), unless the discovery plan otherwise provides and the
6 court so orders, the deadline for the joint pretrial order is 30 days after the dispositive-motion
7 deadline (i.e. September 24, 2025). If dispositive motions are filed, the deadline for filing the
8 joint pretrial order will be suspended until 30 days after decision on the dispositive motions or
9 further court order.
10

11 **6. Pretrial Disclosures (Fed. R. Civ. P. 26(a)(3))**

12 Local Rule 26-1(b)(6) requires that pre-trial disclosures, pursuant to Federal Rule of
13 Civil Procedure 26(a)(3), and any objections thereto shall be included in the Pre-Trial Order.
14 The Parties wish to deviate from that rule so as to permit a reasonable opportunity to evaluate a
15 party's pre-trial disclosures and make well-reasoned objections thereto. The Parties do not feel
16 they can adequately do so under the modified schedule of Local Rule 26-1(b)(6). Therefore, the
17 Parties propose following the schedule in Federal Rule of Civil Procedure 26(a)(3)(B) which
18 requires parties to make pre-trial disclosures not later than thirty (30) days before trial, and
19 submit any objections thereto not later than fourteen (14) days before trial.
20

21 **7. Alternative Dispute Resolution**

22 Pursuant to Local Rule 26-1(b)(7), the Parties hereby certify that they have met and
23 conferred about the possibility of using alternative dispute-resolution processes and have
24 confirmed a mediation date for April 28, 2025.
25

26 **8. Court Conference**

27 The Parties are not requesting a court conference.
28

1 **9. Alternative Forms of Case Disposition**

2 Pursuant to Local Rule 26-1(b)(8), the Parties have considered consent to trial by a
3 Magistrate Judge under 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73, and the use of the Short Trial
4 Program (General Order 2013-01).

5 The Parties do not believe that this case would effectively be resolved through the Short
6 Trial Program.

7 After meeting and conferring, the parties do not consent to have this matter tried before
8 a Magistrate Judge.
9

10 **10. Electronic Evidence**

11 Pursuant to Local Rule 26-1(b)(9), the Parties have discussed and intend to present
12 evidence in electronic format to jurors for the purposes of jury deliberations. The Parties agree
13 and stipulate that the preferred method for disclosure and discovery of electronically stored
14 information is Portable Document Format (“PDF”), such as Adobe Acrobat, with a recognize
15 text Optical Character Recognition (“OCR”) enabled. The Parties also agree that the
16 information can also be produced in the format in which the material is conveyed from the
17 client to its counsel, provided that special software is not necessary to open or view the
18 information. If in good faith a party questions the authenticity of an electronically stored
19 document, or for other good faith reason, the party may request the PDF format document to be
20 produced in its native format.
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1 **11. Extension of Scheduled Deadlines**

2 Pursuant to Local Rule 26-3, a motion or stipulation to extend a deadline set forth in a
3 discovery plan must be received by the court no later than 21 days before the expiration of the
4 subject deadline. A request made within 21 days of the subject deadline must be supported by a
5 showing of good cause. A request made after the expiration of the subject deadline will not be
6 granted unless the movant also demonstrates that the failure to act was the result of excusable
7 neglect.
8
9

10 DATED: March 12, 2025

DATED: March 12, 2025

11
12 **RESNICK & LOUIS, P.C.**

**POLI, MOON, ZANE, PLLC &
ABIR COHEN TREYZON SALO, LLP**

13
14 By: //s// Paul A. Acker
15 PAUL A. ACKER, ESQ.
16 BETHANY L. KIRKENIR, ESQ.
*Attorneys for Defendant,
Penn-Star Insurance Company*

By: //s// Kevin M. Pollack
MICHAEL N. POLI, ESQ.
KEVIN M. POLLACK, ESQ.
Attorneys for Plaintiff

17 **IT IS SO ORDERED:** Granted in Part and
18 Denied In Part. The Court denies the
19 parties' proposed pre-trial disclosures
20 schedule at Paragraph 6 because it may not
21 allow a reasonable time for the Court to
22 address pre-trial objections. The Court also
23 denies the parties' proposal regarding the
24 pretrial order at Paragraph 5. Instead, the
25 parties shall file the joint pretrial order 60
26 days after the dispositive-motion deadline.
27 The pretrial order shall include the pretrial
28 disclosures and any objections thereto per
LR 26-1(b)(6). If dispositive motions are
filed, the deadline for filing the joint pretrial
order will be suspended until 60 days after
decision on the dispositive motions or
further court order. The Court may consider
a later request to modify the pretrial
disclosures deadline for good cause and
after a good faith effort to comply with the
pretrial deadline.



Honorable Maximilliano D. Couvillier
United States Magistrate Judge

DATED: 3-14-25